

ORIGINAL



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Steve Wene, No. 019630
MOYES SELLERS LTD.
1850 N. Central Ave., Ste. 1100
Phoenix, Arizona 85004
(602) 604-2141
swene@lawms.com
Attorneys for Cerbat Water Company, Inc.

Arizona Corporation Commission

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AZ CORP COMMISSION
DOCKET CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

GARY PIERCE, CHAIRMAN
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP
BRENDA BURNS

**IN THE MATTER OF THE
APPLICATION OF CERBAT WATER
COMPANY FOR A RATE INCREASE.**

DOCKET NO. W-02391A-10-0218

**MOTION FOR AN EXTENSION OF
TIME TO FILE COMMENTS TO
STAFF REPORT**

The Cerbat Water Company ("Company") hereby files comments to the Staff Report in this matter. The Company fundamentally disagrees with Staff's recommendation that after 10 years, the rates for the average customer should increase less than 2%. Moreover, the Company and its owner, the Claude K. Neal Family Trust ("Trust") has made substantial expenditures recently that are not being recovered under Staff's recommendation. In fact, even though Staff argues that its recommendation will increase Company revenues to \$125,391, this does not even meet the Company's test year operating expenses of \$136,633. In other words, unless the Company's expenses

1 drop approximately 10%, which defies logic, the Company will not be able to pay its
2 expenses. Therefore, the Company requests that the court adopt its proposed rates, with
3 the proposed Company adjustment set forth in this pleading.
4

5 **Plant in Service**

6 The Company disagrees with Staff Adjustments A and B. In Adjustment A, Staff
7 decreases plant in service by \$338,741 because (1) the plant was invoiced to the Trust
8 and not Cerbat; and, 2) Staff found no evidence that the plant additions were acquired for
9 the benefit of the customers. *See* Staff Report p. 6.
10

11 First, simply because the Trust, which owns and manages the Company, was
12 invoiced does not justify removing the plant. The Trust is an equity holder and it built
13 the plant and transferred the plant to Cerbat in exchange for equity. More importantly,
14 the Trust has a management contract that allows it to make plant improvements and
15 repairs and the Company is responsible for the costs of such repairs and improvements so
16 long as the direct costs are supported by invoices. *See* Attachment 1, Management
17 Agreement, p. 2-3, ¶ 2-4.
18
19
20

21 Second, the plant was acquired to benefit the customers. As the engineering report
22 demonstrates, the water system does not serve anyone but the Cerbat customers. Staff
23 was able to discern that the invoices addressed transmission and distribution mains as
24 well as meters and hydrants.
25

26 Unless Staff can show that this plant is not used and useful and providing service
27 to the customers, Adjustment A should be rejected. Accordingly, Adjustment B should
28 also be rejected because it is simply a depreciation “flow-through” based upon

1 Adjustment A. The court should adopt the Company's plant in service and depreciation
2 schedules.

3 4 **Repairs and Maintenance Expense**

5 The Company also disagrees with Staff Adjustment C. Here, Staff eliminates
6 \$43,249 spent to repair the one Trust well that serves Cerbat. Staff claims that Cerbat is
7 not responsible for maintaining the Trust well. Under the Management Agreement, the
8 Company is responsible for these expenses. *See* Attachment 1, Management Agreement,
9 p. 2-3, ¶ 2-4. In fact, the Management Agreement specifically states Cerbat is
10 responsible for "all costs, expenses and capital improvements ... including ... (E)
11 Replacement of and repairs to the water system ... (F) All plant additions and
12 improvements...." *See id.* at p. 4, ¶ 4. Clearly, Cerbat is responsible for the costs to
13 repair the well and the Company should be allowed to recover these costs in rates.


14
15
16
17 The Company recently has incurred more expenses to keep the well operating.
18 As supported by the invoices set forth in Attachments 2 and 3, Cerbat has incurred
19 \$85,126.62 to make necessary repairs to this well. The Company therefore seeks to
20 amend its original position, and increase the Category 620 Repairs and Maintenance from
21 \$53,830 to \$95,707.62 based upon the additional expenses described above. The
22 Company further believes that the \$95,707.62 should be pro-rated over three years (when
23 its next rate case is due as recommended by Staff), so the annualized rate case operating
24 expense is \$31,902.54.
25
26
27
28

1 **Acquisition of Trust Assets**

2 Staff recommends that Cerbat acquire all water system assets necessary to provide
3 service to the customers. The Company has agreed to acquire the assets and the Trust has
4 agreed to the transfer the assets to the Company for fair market value. The Trust is
5 willing to finance the acquisition as well. Provided the Commission approves the
6 impending finance application, the transfer should occur.
7

8
9 RESPECTFULLY SUBMITTED this 22nd day of February, 2011.

10
11 **MOYES SELLERS LTD.**

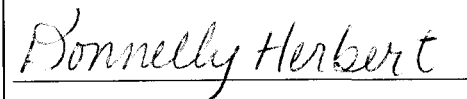
12 
13 Steve Wene
14 Attorneys for Cerbat Water Company, Inc.

15 Original and 13 copies filed
16 this 22nd day of February, 2011 with:

17 Docket Control
18 Arizona Corporation Commission
19 1200 West Washington
20 Phoenix, Arizona 85007

21 Copy of the foregoing mailed
22 This 22nd day of February, 2011 to:

23 Kimberly A. Ruht, Legal Division
24 Arizona Corporation Commission
25 1200 West Washington
26 Phoenix, Arizona 85007

27 
28

ATTACHMENT 1

MANAGEMENT AGREEMENT

THIS AGREEMENT, made as of the 1st day of January, 1991, by and between CERBAT WATER COMPANY, an Arizona corporation, hereinafter referred to as "Owner" and CLAUDE K. NEAL FAMILY TRUST, hereinafter referred to as "Manager."

WITNESSETH:

WHEREAS, Owner is a public service corporation operating a water utility system near the Cerbat Mountains and the Hualapai Valley area, and

WHEREAS, Owner is desirous of delegating the day-to-day operation and management functions to professional management, and

WHEREAS, Manager has substantial ability and experience enabling it to manage and operate Owner's facilities.

NOW, THEREFORE, the parties enter into this Agreement and for and in consideration of the mutual covenants, warranties and representations, and agree as follows:

1. Manager shall operate Owner's facilities, utilizing Manager's employees, in a manner consistent with the industry standards for the operation of said facilities, and consistent with the requirements of the appropriate health agencies. The operation shall include the right to modify, remove and replace any and all facilities. Consistent with the above standards and requirements, the day-to-day operation and maintenance of the facilities shall be the responsibility and prerogative of Manager; however, any maintenance or capital expenditures exceeding \$1,000.00 will

require the specific approval of Owner. Such management and operation shall include but not be limited to the following:

- A. Provision of a certified operator in accordance with the rules of the State of Arizona and Mohave County.
- B. Inspection and operation of the water plants, including disinfection, if necessary. Checking for proper operation of the well pumps, booster pumps, air compressors, tank levels and pressures.
- C. 24 hour a day availability to assist in emergencies.
- D. Regular inspection of the distribution system for leaks or other problems.
- E. Arrange for repairs to the system by qualified parties.
- F. Arrange for installation of water meters for new service connections within the Owner's service area.
- G. Monthly reading of the water meters as prescribed by the Arizona Corporation Commission.
- H. Bill customers monthly for water service, according to the rate schedule set by the Arizona Corporation Commission.
- I. Collect past-due water bills by turn-offs if necessary. The legal expenses associated with the prosecution and defense of collection matters involving the Commission or courts shall be borne by the Owner.
- J. Deposit payments to the water company account and provide full accounting to Owner.

Additionally, Manager shall provide to the Owner:

- K. Information regarding emergency repair; however, the Manager may at his sole discretion commit Owner to expenditures not to exceed \$1,000.00 without prior consent of Owner.
- L. Bid comparative information for non-emergency materials to be purchased.

- M. Information for annual reports as required by the Arizona Corporation Commission.
- N. Monthly revenue, expense and sales data.
- O. Recommendations regarding approval of bills for payment.
- P. A non-exclusive water company office in which normal customer service and payment can be conducted.
- Q. Cost accounting for petty cash expenditures.
- R. Data for annual A.D.W.R. withdrawal reports.

2. Owner and Manager agree that certain of the work contemplated to be performed by the Manager cannot be defined sufficiently at the time of execution of the Agreement, and that substantial additional work related to the operation and not covered in Paragraph 1 may be needed during performance of this Agreement. It is intended that such categories of work classified as special services for which Manager shall be paid by Owner at the rate of \$40.00 per man-hour, plus all direct costs to Manager as supported by invoice from the provider. These special services may include, but are not limited to, the following:

- A. Assist Owner in arbitration, litigation, public hearing, or other legal or administrative proceedings involving the water system.
- B. Services and costs necessitated by out-of-town travel required of the Manager.
- C. Consultation, review of plans contract and bid preparation, inspection and supervision of additions or construction, contract repairs or significant changes in the size or complexity of the water system.
- D. Meter installations and other construction projects requested by the Owner.

- E. Consultation or other services on matters not otherwise provided in the Agreement.
- F. Equipment repair services.

All special services except for emergencies and regulatory requirements must be authorized in writing by the Owner before work can progress and be billed per the current rate schedule.

3. The Owner shall pay to the Manager a fee of \$8.50 per service, per month, for services rendered pursuant to this Agreement. Special services performed pursuant to Paragraph 2 of this Agreement shall be paid monthly. If Owner fails to make any payment due Manager for services and expenses within 15 days after due date, an additional charge shall be 1.5 percent per month on the unpaid fees from the due date until fully paid.

4. The Owner is responsible for, and will arrange the funding of, all costs, expenses and capital improvements of the Company including but not limited to the following:

- A. Electric power and energy for the operation of the water system within the certificated area.
- B. All chemicals required to treat the water.
- C. Required testing performed by a laboratory.
- D. Insurance as may be required on the water system.
- E. Replacement of and repairs to the water system.
- F. All plant additions and improvements.
- G. Legal counsel for the water system.
- H. Engineering services.
- I. Accounting services for the water company.

Additionally, Owner shall:

- J. Assist Manager by placing at his disposal all available information pertinent to the water system, including all reports, as-built plans, specifications and any other data relative to the water system.
- K. Examine all information and reports presented by the Manager and render in writing decision or directives within a reasonable time.
- L. Give prompt notice to the Manager whenever the Owner becomes aware of any problem relating to the water system.
- M. Furnish or direct Manager to provide necessary special services as stipulated to in Paragraph 2 of the Agreement or other services as required.

5. Payment for the services performed under this Agreement shall be made monthly by Owner to Manager at its offices in Kingman, Arizona, within 15 days from date of receipt of the billing therefor.

6. Owner shall have the right to review the charges and billing procedure under Paragraph 3, including the man-hours assigned to the facilities, billings for services performed, and capital expenditures.

7. Owner shall be responsible for filing, maintaining, and reporting all regulatory, health, tax and corporate documents necessary for the continued operation of the plant.

8. Owner agrees that to the extent it is capable, and in its sole discretion, consistent with sound utility and management practices, it will provide the capital, or Commission approved funding mechanism, necessary to provide needed capital improvements as agreed upon by the Owner and Manager.

9. Owner shall arrange to have Manager named as an

additional insured on its liability insurance coverage and shall maintain reasonable amounts of liability insurance during the term hereof. Owner shall indemnify and hold Manager harmless from any and all liability for acts or omissions related to the operation of the facilities occurring during the term of this Agreement.

10. Manager shall not be liable to Owner nor to any of Owner's consumers, nor to any other person, firm or corporation whatsoever, for or on account of any claim resulting from any condition on the system that existed prior to the date of this Agreement, or for any interruption or failure in delivery of water in accordance with this Agreement, or for any substandard quality water supplied, or for or on account of any loss, injury or damage occasioned thereby, where such interruption or failure, either directly or indirectly, is caused by or results from any of the following:

- A. Fire, lightning, flood, windstorm, Act of God, invasion or force majeure.
- B. Compliance with any orders, rules or regulations, whether valid or invalid, of any governmental authority or agency.
- C. Strikes, lockouts or labor disputes.
- D. Interruption in supply or delivery, or any other failure to perform by any person under any contracted supplier of water to Owner.
- E. Breakdown, repair or replacement of any machinery, equipment, pipeline or other facility.
- F. Shortage of power, supplies, material or labor, or where such interruption or failure is directly or indirectly due to any cause not reasonably preventable by Manager or not reasonably within its control.

In case such interruption or failure shall be occasioned by any

cause specified under E or F above, Manager will endeavor to remedy or eliminate such cause as expeditiously as is reasonably possible. In the event claims or causes of action are instituted by third parties as a result of the interruptions or substandard quality water supplied as hereinabove specified, Owner shall indemnify and defend Manager against all liability or loss.

11. Manager shall perform no public service corporation functions or services as a result of this Agreement. If, at any time, the Arizona Corporation Commission, or any other state or federal commission or body having authority to regulate public utilities, should attempt or threaten to exercise jurisdiction over Manager for the purpose of regulating the operation of the facilities for Owner, or for the purpose of examining the books, accounts or other internal affairs of Manager in connection with such services, Manager may notify Owner of such facts, and this Agreement shall be deemed terminated fifteen (15) days following receipt of such notice by Owner. Waiver by Family Trust of the exercise of jurisdiction by any regulatory commission or body shall not be deemed a waiver with respect to any subsequent or additional regulation.

12. By terms of this Agreement, Manager shall not obtain and Owner does not surrender any ownership rights in the subject facilities.

13. This Agreement shall remain in full force and effect for the term of one year from the effective date and thereafter until terminated by either party hereto by giving written notice of such termination to the other. Such notice must specify the date of

termination and shall be given not less than sixty (60) days prior to such date.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first written above.

CLAUDE K. NEAL FAMILY TRUST

By B Marc Neal
CO-TRUSTEE

By Rita B. Neal
CO-TRUSTEE

CERBAT WATER COMPANY

By B Marc Neal
OWNER

ATTACHMENT 2

REMITTANCE ADDRESS: P.O. BOX 20216, PHOENIX, AZ 85036-0216
PHONE 602-276-5599 • FAX 602-276-5592

INVOICE NO: 84789-84053
CUSTOMER NO: CLA200
LOCATION: BANK STREET WELL
FILE NO: 1745-00

DATE: 12/14/09		JOB NO: PP9-0367		SALES NO: 40		P.O. NO:		SHIP VIA:	
QTY	MATERIALS		AMOUNT		LABOR				AMOUNT
1	HEADSHAFT		350.00		FURNISH & INSTALL A NEW 350HP ELECTRIC SERVICE.				
1	STRETCH TUBE		350.00						
1	CHECK VALVE		2,000.00						
1	NIPPLE		333.00						
1	CONE SCREEN		300.00						
1	LOT MISC.		400.00						
					800 AM SERVICE SECTION WITH SHOP DRAWINGS AND PERMITS				
					350HP REBUILT MOTOR				
					CHANGE HEADSHAFT TO FIT MOTOR				
					PULL ALL WIRE, CUSTOMER TO INSTALL ALL CONDUIT & CEMENT PADS				
					ELECTRICIAN INSTALLED WIRE FROM SET TO STARTER				
					WIRE				
					ELECTRICIAN TO HOOK UP GENERATOR				
					FREIGHT				
					TOTAL FOR ABOVE				45,109.00
					FIELD LABOR				8,190.00
					SUBSISTENCE				1,050.00
					SHOP LABOR				250.00
					FINANCE CHARGES				1,234.85
TOTAL MATERIALS			3,733.00		LABOR				55,833.85
					MATERIALS				3,733.00
					FREIGHT				0.00
					TAX				2,743.47
					TOTAL				62,310.32

ATTACHMENT 3

Empire Pump Corporation, dba Duncan Pump

1820 S. 19th Avenue ♦ Phoenix, AZ 85009 ♦ (602) 254-6154 ♦ FAX (602) 254-2261

AZ ROC #'s 216197, 216198 NY ROC # 0069972

INVOICE

Job #: **16950**

Client Information

Date: December 21, 2010
Name: Cerbat Water Co.
Address: 7313 E. Concho Dr.
Kingman, AZ 86401

Contact: Mike Neal
Phone: 928-716-4788
Contact: Marcus Neal
Phone: 928-303-4213
Email: ksar60@gmail.com

Site Information

City: Kingman, AZ
County: Mohave

SERVICE

♦ Mob and demob to Kingman, AZ.....	\$	1,000.00
♦ Rig crew labor - 44.75 hours @ \$220.00 per hour.....	\$	9,845.00
♦ (1) M10LC-17: Oil lube; standard construction; rubber bowl bearings; 10 x 20 SU; full trim impellers.....	\$	9,116.00
♦ (1) Column 8" x .277" x 19'11" 3/4T W/C.....	\$	633.00
♦ Machine shop labor to assemble bowls and build motor bushing (6) hours @ \$75.00 per hour.....	\$	450.00
♦ Miscellaneous shop and field supplies.....	\$	200.00
♦ Shipping and handling.....	\$	331.19

Sub-Total:	\$	21,575.19
Sales Tax @ 8.85%:	\$	1,241.11
Total:	\$	22,816.30

Terms: Net 30 Days

Thank you for your business.